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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC336

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the NMFS Southwest Fisheries Science Center (SWFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of SWFSC's request under section 101(a)(5)(A) of the MMPA for the development and implementation of regulations governing the incidental taking of marine mammals. We invite information, suggestions, and comments on SWFSC's application and request.

DATES: Comments and information must be received no later than [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for

providing email comments is ITP.Laws@noaa.gov. We are not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of SWFSC's application may be obtained by visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

The SWFSC is concurrently releasing a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their fisheries research. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is also available at: <http://swfsc.noaa.gov/dpea.aspx>.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

Summary of Request

On April 25, 2013, we received a complete and adequate application from SWFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by SWFSC. The requested regulations would be valid for five years from the date of issuance. The SWFSC plans to conduct fisheries research surveys in the California Current Research Area (off the U.S. west coast), the Eastern Tropical Pacific Research Area, and the Antarctic Research Area (in the Antarctic Scotia Sea). It is possible that marine mammals may interact with fishing gear (e.g., trawl nets, longlines) used in SWFSC’s research, resulting in injury, serious injury, or mortality. In addition, the SWFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, SWFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The SWFSC is the research arm of NMFS in the Southwest Region. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in three geographic research areas: the California Current Research Area (along the U.S. West Coast), the Eastern Tropical Pacific Research Area (throughout the Eastern Tropical Pacific Ocean), and the Antarctic Research Area (in the Scotia Sea area off Antarctica). The SWFSC provides scientific information to support the Pacific Fishery Management Council and numerous other domestic and international fisheries management organizations.

The SWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. SWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the SWFSC designs and executes the studies and funds vessel time. The SWFSC proposes to administer and conduct

approximately 14 survey programs over the five-year period. The gear types used fall into several categories: pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, bottom-contact trawls, and other gear. Only pelagic trawl and longline gears are likely to interact with marine mammals. The majority of these surveys also use active acoustic devices.

A more detailed description of the fisheries research conducted by SWFSC may be found in their application, which is available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning SWFSC's request (see ADDRESSES). We will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by SWFSC, if appropriate.

Dated: April 29, 2013.

Helen M. Golde,
Acting Director,
Office of Protected Resources,
National Marine Fisheries Service.

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